

TITLE 326 AIR POLLUTION CONTROL BOARD

FINDINGS AND DETERMINATION OF THE COMMISSIONER PURSUANT TO IC 13-14-9-8 AND DRAFT RULE #99-220(APCB)

DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for amendments to 326 IAC 1-1-3, concerning references to the Code of Federal Regulations, to update any references to the Code of Federal Regulations (CFR) in Title 326 to mean the July 1, 1998, edition and has scheduled a public hearing/meeting before the air pollution control board (board) for consideration of preliminary adoption of these rules.

CITATIONS AFFECTED: 326 IAC 1-1-3.

AUTHORITY: IC 13-14-18; IC 13-17-3-4; IC 13-17-3-11.

STATUTORY REQUIREMENTS

IC 13-14-9-8 recognizes that under certain circumstances it may be appropriate to reduce the number of public comment periods routinely provided. In cases where the commissioner determines that there is no anticipated benefit from the first and second public comment periods, IDEM may forego these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for preliminary adoption. Two (2) opportunities for public comment (at the public hearings prior to preliminary and final adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by IC 13-14-9-8, the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for preliminary adoption, and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to IC 13-14-9-8.

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

- (A) an adoption or incorporation by reference of a federal law, regulation, or rule that:
 - (i) is or will be applicable to Indiana; and
 - (ii) contains no amendments that have a substantive effect on the scope or

- intended application of the federal law or rule;
 - (B) a technical amendment with no substantive effect on an existing Indiana rule; or
 - (C) a substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and
- (2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in IC 13-14-9-7(a)(2) from:
- (A) exposing the rule to diverse public comment under section IC 13-14-9-3 or IC 13-14-9-4;
 - (B) affording interested or affected parties the opportunity to be heard under IC 13-14-9-3 or IC 13-14-9-4; and
 - (C) affording interested or affected parties the opportunity to develop evidence in the record collected under IC 13-14-9-3 and IC 13-14-9-4.

BACKGROUND

Incorporation of the Code of Federal Regulations

Many of Indiana's air quality standards, sampling procedures, monitoring requirements, and various compliance methodologies are based on federal requirements. During the development of rules under Title 326 of the Indiana Administrative Code (IAC), it is often more efficient to refer to or incorporate specific portions of the CFR rather than to reprint them in full. Incorporation ensures that state rules will not be interpreted in such a way as to conflict with federal law and national policy and allows the state to use the resources of the federal system instead of expending its own rulemaking resources in what would otherwise be an unnecessary duplication of rulemaking effort. By annually updating the reference to the CFR, the Indiana Department of Environmental Management is able to incorporate by reference the latest version of the parts of the CFR, already incorporated into the air rules, with the exception of those most recently published in the Federal Register.

326 IAC 1-1-3, References to the Code of Federal Regulations, indicates the yearly edition of the CFR which is applicable to rules that have been incorporated by reference throughout Title 326, unless a different edition is specifically incorporated into an individual rule.

The 1998 edition of the CFR is a codification of the general and permanent rules published in the Federal Register (FR) as of June 30, 1998.

Title 40 of the CFR entitled "Protection of Environment," includes all federal environmental regulations promulgated by the U.S. Environmental Protection Agency (U.S. EPA). It is referenced throughout Title 326 of the IAC.

Title 29 of the CFR, entitled "Intergovernmental Review of Environmental Protection Agency Programs and Activities", contains federal rules for the asbestos and lead programs. Title 29 of the CFR is referenced in Article 14 (Emission Standards for Hazardous Air Pollutants), Article 18 (Asbestos Management), and Article 23 (Lead-Based Paint Program) of Title 326 of the IAC. Many of these regulations are either directly incorporated by reference into Title 326 of the IAC as state-enforceable rule provisions or they are incorporated into Title 326 of the IAC as federal authority for the implementation and enforcement of state rule provisions.

The following are examples of regulations that have been promulgated in the CFR between July 1, 1997, and June 30, 1998. To the extent that 326 IAC refers to these CFR citations, these will be incorporated as part of this rulemaking:

40 CFR 51, Preparation, Adoption, and Submittal of State Implementation Plans

- This rulemaking action of August 15, 1997, establishes a more clarified and flexible transportation conformity rule. The conformity rule requires that transportation plans conform to state air quality implementation plans. Conformity to a state implementation plan (SIP) means that transportation activities will not produce air quality violations, worsen existing violations, or delay timely attainment of national ambient air quality standards.

40 CFR 60, Standards of Performance for New Stationary Sources

- The August 25, 1997, final rule amends the emission guidelines and the standards of performance for municipal waste combustion (MWC) units. These amendments improve the clarity of Subparts Cb and Eb, and make technical corrections that had been brought to the attention of U.S. EPA.
- The August 25, 1997, document amends the guidelines and the standards for MWC units to make them consistent with a court order in a federal lawsuit and subsequent court order. The amendments affect the applicability of the guidelines and standards, and add supplemental emission limits for four (4) pollutants.
- The September 15, 1997, action promulgates new source performance standards and emission guidelines to reduce air emissions from hospital/medical/infectious waste incinerator(s) (HMIWI) by adding standards of performance for new HMIWI, and emission guidelines for existing HMIWI. The standards and guidelines implement Sections 111 and 129 of the Clean Air Act (CAA) as amended in 1990.
- The November 26, 1997, action clarifies the applicability of the New Source Performance

Standards for Nonmetallic Mineral Processing Plants (40 CFR 60, Subpart 000).

- The June 16, 1998, action amends, corrects errors, and clarifies regulatory text of the "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills", which was issued as a final rule and guideline on March 12, 1996.

40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories

- Emission Guidelines for Existing Sources and Standards of Performance for New Stationary Sources for Large Municipal Waste Combustion Units. On December 19, 1995, pursuant to Sections 111 and 129 of the CAA, U.S. EPA promulgated emission guidelines applicable to existing municipal waste combustor (MWC) units and new source performance standards applicable to new MWC. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with the capacity to combust less than or equal to two hundred fifty (250) tons per day of municipal solid waste (MSW), and all cement kilns combusting MSW. As a result, subparts Cb and Eb apply only to MWC units with the capacity to combust more than two hundred fifty (250) tons per day of MSW per unit (large MWC units). This document amends the guidelines and the standards for MWC units to make them consistent with the Davis decision and subsequent court order.
- National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants: The October 7, 1997, action promulgates national emission standards for each new or existing potline, paste production plant, and anode bake furnace associated with a primary aluminum reduction plant, and for each new pitch storage tank associated with a primary aluminum production plant. In addition, the new source performance standard for primary aluminum plants is amended and most of the requirements are incorporated in the final national emission standards.
- National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries. On January 16, 1998, EPA published a notification of a limited exclusion from applicability for gasoline distribution facilities that would be, but for this action, subject to the air toxic provisions of 40 CFR 63, Subpart R, the National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning. On May 5, 1998, EPA announced a 3-month stay of certain national emission standards for hazardous air pollutants (NESHAP) for certain sources.

- National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry. The May 12, 1998, action promulgates final amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories; Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) by adding tetrahydrobenzaldehyde (THBA) and crotonaldehyde to, and removing acetaldol from, the list of chemical production processes. This rule also addresses compliance dates; implements Section 112(d) of the CAA; and amends the initial list of source categories of HAP required by Section 112(c) of the Act.

40 CFR 68, Chemical Accident Prevention Provisions

- Accidental Release Prevention Requirements: On August 25, 1997, the U.S. EPA announced clarifying interpretations of the accident prevention regulations authorized by Section 112(r) of the CAA.

40 CFR 74, Acid Rain Program

- Revisions to Permits, Allowance System, Sulfur Dioxide Opt-Ins, Continuous Emission Monitoring, Excess Emissions, and Appeal Procedures. The October 24, 1997, final rule revisions streamline the Acid Rain Program while still ensuring achievement of its statutory goals of reducing sulfur dioxide and nitrogen oxides emissions.
- Revisions to Sulfur Dioxide Opt-Ins. The April 16, 1998, final rule is intended to promote participation in the Title IV opt-in program by clarifying existing regulations, allowing a limited exception to the general rule of one (1) designated representative for all affected units at a source, revising the conditions under which the department may cancel current-year allowance allocations, and allowing thermal energy plans to be effective on a quarterly basis.

40 CFR 76, Acid Rain Nitrogen Oxides Emission Reduction Program

- On May 1, 1998, EPA published a final rule in response to a court order. This action removes a provision of a final rule concerning emission limitations for the second phase of the Nitrogen Oxides Reduction Program under Title IV of the CAA.

40 CFR 82, Protection of Stratospheric Ozone

- This interim final rule published on January 28, 1998, allocates essential-use allowances for the

1998 control period based on the quantities approved by the parties for the nominated uses. Essential use allowances permit a person to obtain controlled ozone-depleting substances as an exemption to the January 1, 1996, regulatory phaseout of production and import. Essential use allowances are allocated to a person for exempted production or importation of a specific quantity of a controlled substance solely for the designated essential purpose.

- On May 22, 1998, the U.S. EPA published a notice of acceptability. This document expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. EPA's Significant New Alternatives Policy (SNAP) program.
- On February 15, 1998, a direct final determination was published. Through this action, the U.S. EPA is making a determination that requiring the use of gas impermeable tarps to control emissions of the pesticide methyl bromide is not appropriate under Section 608(a)(2) of the CAA at this time. Methyl bromide depletes stratospheric ozone, which protects the earth from harmful ultraviolet radiation, and existing CAA regulations call for U.S. production and importation of methyl bromide to cease by January of 2001.

FINDINGS

The commissioner of IDEM has prepared findings regarding rulemaking on the incorporation by reference of the 1998 version of the CFR as required by federal rule. These findings are prepared under IC 13-14-9-8 and are as follows:

- (1) This rule is an incorporation of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana in many cases is required by the CAA to adopt these requirements as state rules.
- (3) The public will benefit from the prompt adoption of this rule because it alleviates unnecessary duplication of rulemaking effort by the state by directly incorporating the CFR.
- (4) I have determined that under the specific circumstances pertaining to this rule, there would be no benefit to the environment or to persons to be regulated or otherwise affected by this rule from the first and second public comment periods.
- (5) The draft rule is hereby incorporated into these findings.

Lori F. Kaplan
Commissioner
Indiana Department of Environmental Management

ADDITIONAL INFORMATION

Additional information regarding this action may be obtained from Kiran Verma, Rules Development Section, Office of Air Management, (317) 233-5678 or (800) 451-6027, press 0, and ask for extension 3-5678 (in Indiana).

DRAFT RULE

SECTION 1. 326 IAC 1-1-3 PROPOSED TO BE AMENDED AT 22 IR 2296, SECTION 1, IS AMENDED TO READ AS FOLLOWS:

326 IAC 1-1-3 References to the Code of Federal Regulations

Authority: IC 13-14-8; IC 13-17-3-4; IC 13-17-3-11

Affected: IC 13-15; IC 13-17

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR) shall mean the July 1, ~~1997~~, **1998**, edition*.

* Copies of the Code of Federal Regulations (CFR) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or are available for copying at the Indiana Department of Environmental Management, Office of Air Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor, Indianapolis, Indiana 46204. (*Air Pollution Control Board; 326 IAC 1-1-3; filed Mar 10, 1988, 1:20 p.m.: 11 IR 2369; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Dec 14, 1989, 9:35 a.m.: 13 IR 868; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 25, 1994, 11:00 a.m.: 17 IR 2237; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3381; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298*).

Notice of First Meeting/Hearing

Under IC 4-22-2-24, IC 13-14-8-1, IC 13-14-8-2, and IC 13-14-9, notice is hereby given that on February 2, 2000 at 1:00 p.m., at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room B, Indianapolis, Indiana, the Air Pollution Control Board will hold a public hearing on proposed amendments to 326 IAC 1-1-3, concerning references to the Code of Federal Regulations.

The purpose of this hearing is to receive comments from the public prior to preliminary

adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but for the accuracy of the record, all comments should be submitted in writing. Procedures to be followed at this hearing may be found in the April 1, 1996, Indiana Register, page 1710 (19 IR 1710).

Additional information regarding this action may be obtained from Kiran Verma, Rules Development Section, Office of Air Management, (317) 233-5678 or (800) 451-6027, press 0, and ask for extension 3-5678 (in Indiana). If the date of this hearing is changed, it will be noticed in the Change of Notice section of the Indiana Register.

Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:

*Attn: Sandie Meanor, ADA Coordinator
Indiana Department of Environmental Management
100 North Senate Avenue
P.O. Box 6015
Indianapolis, Indiana 46206-6015*

or call (317) 233-1785. Speech and hearing impaired callers may contact the agency via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.

Copies of these rules are now on file at the Office of Air Management, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East, Indianapolis, Indiana and are open for public inspection.